

ESTTA Tracking number: **ESTTA123792**

Filing date: **02/07/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Consilient Restaurants, L.P.
Granted to Date of previous extension	02/07/2007
Address	2902 Carlisle Street, Suite 105 Dallas, TX 75204 UNITED STATES
Attorney information	J. Kevin Gray; Linda M. Novak Fish & Richardson P.C. 1717 Main Street, Suite 5000 Dallas, TX 75201 UNITED STATES novak@fr.com, jkg@fr.com, tmdocdal@fr.com, kzw@fr.com Phone:(214) 292-4083

### Applicant Information

Application No	76403255	Publication date	10/10/2006
Opposition Filing Date	02/07/2007	Opposition Period Ends	02/07/2007
Applicant	Thursday Enterprise, LLC 520 N. Columbus Blvd. Suite 203 Philadelphia, PA 19123 UNITED STATES		

### Goods/Services Affected by Opposition

Class 043. First Use: 1999/09/00 First Use In Commerce: 1999/09/00 All goods and services in the class are opposed, namely: Restaurant and catering services	
Related Proceedings	Cancellation proceeding against Reg. No. 3033342 (Cancellation Proceeding No. not yet assigned)
Attachments	19438-004pp1.pdf ( 14 pages )(1333491 bytes )
Signature	/lmn/
Name	J. Kevin Gray; Linda M. Novak
Date	02/07/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 76/403,255  
For the Mark CUBA LIBRE  
Published in the Official Gazette on October 10, 2006 at TM 1077

Consilient Restaurants, L.P.,

Opposer,

v.

Thursday Enterprise, LLC,

Applicant.

Opposition No.

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

Consilient Restaurants, L.P., a limited partnership organized and existing under the laws of the State of Texas, believes that it will be damaged by registration of United States Trademark Application Serial No. 76/403,255 filed on May 2, 2002 (the "Application") and hereby opposes

**CERTIFICATE OF MAILING BY ELECTRONIC TRANSMISSION**

I hereby certify under 37 CFR §2.197 that this correspondence is being deposited with the United States Patent and Trademark Office Trademark Trial and Appeal Board by electronic transmission and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

February 7, 2007  
Date of Deposit

*Linda M. Novak*  
Signature

Linda M. Novak  
Typed or Printed Name of Person Signing Certificate

the same. The Application, including the entire interest in the mark identified therein, was originally filed by 200 8<sup>th</sup> Avenue Restaurant Corp. and was thereafter assigned to Thursday Enterprise, LLC on November 25, 2003, which assignment is recorded at Reel 2884, Frame 0169 of the U.S. Patent and Trademark Office Assignment records. Thursday Enterprise, LLC may hereinafter be referred to as "Applicant." The grounds for opposition are as follows:

1. Consilient Restaurants, L.P. is in the business of providing restaurant, bar, and catering services in the United States. Consilient Restaurants, L.P. offers and delivers such services in the United States under the mark CUBA LIBRE.

2. Consilient Restaurants, L.P. is now and has been engaged in restaurant, bar, and catering services under the CUBA LIBRE mark, by itself and through its predecessor in interest, since at least as early as December 1, 1994. Hereinafter, Consilient Restaurants, L.P. will be referred to as "Opposer" and such use by Consilient Restaurants, L.P. and its predecessor in interest will be collectively referred to as use by "Opposer").

3. At least as early as December 1, 1994, Opposer adopted and began using in United States commerce regulated by Congress, and continues to use the mark CUBA LIBRE for restaurant, bar, and catering services (hereinafter, the "services"). Opposer has common law rights in the mark CUBA LIBRE.

4. On May 12, 2004, Opposer filed U.S. Trademark Application Serial No. 78/417,257 for the mark CUBA LIBRE for use in connection with its restaurant, bar, and catering services, which application is valid and subsisting. See **Exhibit A** attached hereto for printouts from the U.S. Patent and Trademark Office Trademark Electronic Search System

Applicant : Thursday Enterprise, LLC  
Serial No. : 76/403,255  
Filed: : May 2, 2002  
Mark : CUBA LIBRE  
Page : 3

Attorney's Docket No.: 19438-004PP1

("TESS") and Trademark Application and Registration Retrieval System ("TARR") evidencing Opposer's application and the current status of same.

5. Since at least as early as December 1, 1994, Opposer has offered and advertised its services in connection with its CUBA LIBRE mark in interstate commerce.

6. At least as early as December 1, 1994, Opposer adopted and began using in United States commerce regulated by Congress, and continues to use, the mark CUBA LIBRE for its services.

7. On May 2, 2002, Applicant's predecessor in interest (200 8<sup>th</sup> Avenue Restaurant Corp.) filed U.S. Application Serial No. 76/403,255 for the mark CUBA LIBRE for use in connection with "restaurant and catering services" in Class 43 and claimed use of the mark in commerce in association with the stated services at least as early as September 1999. The entire interest in this mark was assigned to Applicant on November 25, 2003 and such assignment was recorded with the U.S. Patent and Trademark Office on December 18, 2003 at Reel 2884, Frame 0169. See **Exhibit B** for printouts from TESS and TARR evidencing the Application and current status of same. Said Application was published for opposition on October 10, 2006; a copy of the publication is attached hereto as **Exhibit C**.

8. Upon information and belief, Applicant did not use the mark CUBA LIBRE for restaurant and catering services before Opposer adopted and began using its CUBA LIBRE mark for restaurant, bar, and catering services.

9. Applicant's mark, CUBA LIBRE, if used in connection with the services described in the Application, is confusingly similar to Opposer's mark CUBA LIBRE, will be

Applicant : Thursday Enterprise, LLC  
Serial No. : 76/403,255  
Filed: : May 2, 2002  
Mark : CUBA LIBRE  
Page : 4

Attorney's Docket No.: 19438-004PP1

used on services closely related to those of Opposer, which services will move through trade channels similar or identical to the trade channels through which Opposer's CUBA LIBRE mark moves, and will be likely to be encountered by many of the same consumers who are purchasers or prospective purchasers of Opposer's CUBA LIBRE services.

10. Applicant's CUBA LIBRE trademark comprises a mark which so resembles Opposer's CUBA LIBRE trademark previously used in the United States and not abandoned as to be likely, when used on or in connection with the services of Applicant, to cause confusion or to cause mistake or to deceive as to the affiliation, connection, association, origin, sponsorship, endorsement, or approval of Applicant's services by Opposer, to the irreparable damage of Opposer.

11. Any dissatisfaction with Applicant's services offered under the CUBA LIBRE mark will necessarily reflect on and injure the reputation and goodwill associated with Opposer's CUBA LIBRE mark.

12. If Applicant is granted a registration for the mark herein opposed, it will obtain thereby a *prima facie* exclusive right to use CUBA LIBRE, which will damage and injure Opposer, the prior and rightful owner and user of the mark CUBA LIBRE in the United States.

WHEREFORE, Opposer requests that registration of Serial No. 76/403,255 be denied and this opposition be sustained.

Applicant : Thursday Enterprise, LLC  
Serial No. : 76/403,255  
Filed: : May 2, 2002  
Mark : CUBA LIBRE  
Page : 5

Attorney's Docket No.: 19438-004PP1

A fee in the amount of \$300 for opposition in one International Class is being paid by electronic charge by to the Deposit Account of counsel for Opposer. Please apply any charges not covered, or any credits, to Deposit Account No. 061050-0401, Order No. 19438-004PP1.

Respectfully submitted,

Date: Feb 7, 2007

Linda M. Novak

J. Kevin Gray  
Linda M. Novak  
FISH & RICHARDSON P.C.  
1717 Main Street  
Suite 5000  
Dallas, Texas 75201  
Telephone: (214) 292-4080; (214) 292-4083  
Facsimile: (214) 747-2091

Attorneys for Opposer,  
CONSILIENT RESTAURANTS, L.P.



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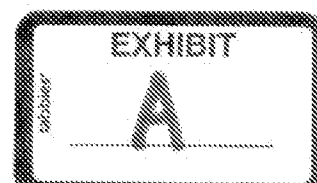
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Please logout when you are done to release system resources allocated for you.

**Record 1 out of 1**[TARR Status](#) [ASSIGN Status](#) [TDR](#) [TTAB Status](#) ( Use the "Back" button of the Internet Browser to return to TESS)**CUBA LIBRE**

<b>Word Mark</b>	CUBA LIBRE
<b>Translations</b>	"The foreign wording in the mark translates into English as free Cuba."
<b>Goods and Services</b>	IC 043, US 100 101, G & S: Restaurant, Bar and Catering Services
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Design Search Code</b>	
<b>Serial Number</b>	78417257
<b>Filing Date</b>	May 12, 2004
<b>Current Filing Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Owner</b>	(APPLICANT) Consilient Restaurants L.P. Consilient Restaurants L.P. is composed of Tristan Simon, General Partner, a citizen of the United States of America LIMITED PARTNERSHIP TEXAS 2902 Carlisle St Ste 105 Dallas TEXAS 75204
<b>Attorney of Record</b>	J. Kevin Gray, Linda M. Novak
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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This page was generated by the TARR system on 2007-02-07 11:41:54 ET

Serial Number: 78417257 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark

CUBA LIBRE

(words only): CUBA LIBRE

Standard Character claim: Yes

Current Status: An office action suspending further action on the application has been mailed.

Date of Status: 2006-12-21

Filing Date: 2004-05-12

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 112

Attorney Assigned:

HAYES GINA CLARK Employee Location

Current Location: M3X -TMO Law Office 112 - Examining Attorney Assigned

Date In Location: 2006-12-20

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Consilient Restaurants L.P.

**Composed Of:**

Consilient Restaurants L.P. is composed of Tristan Simon, General Partner, a citizen of the United States of America

Address:

Consilient Restaurants L.P.  
2902 Carlisle St Ste 105  
Dallas, TX 75204  
United States

**Legal Entity Type:** Limited Partnership

**State or Country Where Organized:** Texas

**Phone Number:** 214-922-7510

**Fax Number:** 214-922-7514

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### GOODS AND/OR SERVICES

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**International Class:** 043

**Class Status:** Active

Restaurant, Bar and Catering Services

**Basis:** 1(b)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

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### ADDITIONAL INFORMATION

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**Translation:** "The foreign wording in the mark translates into English as free Cuba."

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### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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### PROSECUTION HISTORY

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2006-12-21 - Letter of suspension mailed

2006-12-20 - Suspension Letter Written

2006-11-16 - Teas/Email Correspondence Entered

2006-11-16 - Communication received from applicant

2006-11-16 - TEAS Response to Office Action Received

2006-05-23 - Non-final action mailed

2006-05-22 - Non-Final Action Written

2006-05-22 - Previous allowance count withdrawn

2006-05-22 - Approved for Pub - Principal Register (Initial exam)

2006-04-19 - Teas/Email Correspondence Entered

2006-03-17 - Communication received from applicant  
2006-03-17 - TEAS Response to Office Action Received  
2005-10-10 - TEAS Change Of Correspondence Received  
2005-09-26 - Non-final action mailed  
2005-09-23 - Non-Final Action Written  
2005-09-20 - Teas/Email Correspondence Entered  
2005-09-16 - Communication received from applicant  
2005-09-16 - Petition To Revive-Granted  
2005-09-16 - TEAS Petition To Revive Received  
2005-07-22 - Abandonment Notice Mailed - Failure To Respond  
2005-07-21 - Abandonment - Failure To Respond Or Late Response  
2005-07-11 - Assigned To Examiner  
2005-07-08 - Attorney Revoked And/Or Appointed  
2005-07-08 - TEAS Revoke/Appoint Attorney Received  
2004-12-11 - Non-final action e-mailed  
2004-12-11 - Non-Final Action Written  
2004-12-11 - Assigned To Examiner  
2004-05-19 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

J. Kevin Gray; Linda M. Novak

**Correspondent**

J. Kevin Gray, Linda M. Novak  
Fish & Richardson P.C.  
P.O. Box 1022  
Minneapolis MN 55440-1022  
Phone Number: (214) 292-4083  
Fax Number: (214) 747-2091



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## Record 1 out of 1

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### Typed Drawing

Word Mark	CUBA LIBRE
Translations	The English translation of the word "LIBRE" in the mark is "FREE".
Goods and Services	IC 043. US 100 101. G & S: Restaurant and catering services. FIRST USE: 19990900. FIRST USE IN COMMERCE: 19990900
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	76403255
Filing Date	May 2, 2002
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	October 10, 2006
Owner	(APPLICANT) Thursday Enterprise, LLC Barry Gutin, New Jersey, Lawrence Cohen, Pennsylvania LIMITED LIABILITY COMPANY PENNSYLVANIA 520 N. Columbus Blvd. Suite 203 Philadelphia PENNSYLVANIA 19123
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Virginia R. Richard
Prior Registrations	3033342
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "Cuba" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

EXHIBIT

B

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-02-07 11:43:10 ET

**Serial Number:** 76403255 [Assignment Information](#)

**Registration Number:** (NOT AVAILABLE)

**Mark (words only):** CUBA LIBRE

**Standard Character claim:** No

**Current Status:** A request for an extension of time to file an opposition has been filed at the Trademark Trial and Appeal Board.

**Date of Status:** 2006-11-06

**Filing Date:** 2002-05-02

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 107

**Attorney Assigned:**  
PAPPAS MATTHEW JAMES [Employee Location](#)

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2006-08-31

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Thursday Enterprise, LLC

**Composed Of:**  
Barry Gutin, New Jersey, Lawrence Cohen, Pennsylvania

**Address:**  
Thursday Enterprise, LLC  
520 N. Columbus Blvd. Suite 203  
Philadelphia, PA 19123  
United States

**Legal Entity Type:** LIMITED LIABILITY COMPANY  
**State or Country Where Organized:** Pennsylvania

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**GOODS AND/OR SERVICES**

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**International Class:** 043  
**Class Status:** Active  
Restaurant and catering services  
**Basis:** 1(a)  
**First Use Date:** 1999-09-00  
**First Use in Commerce Date:** 1999-09-00

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**ADDITIONAL INFORMATION**

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**Disclaimer:** "Cuba"

**Translation:** The English translation of the word "LIBRE" in the mark is "FREE".

**Prior Registration Number(s):**  
3033342

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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2006-11-06 - Extension Of Time To Oppose Received  
2006-10-10 - Published for opposition  
2006-09-20 - Notice of publication  
2006-08-23 - Law Office Publication Review Completed  
2006-08-18 - Assigned To LIE  
2006-08-12 - Approved for Pub - Principal Register (Initial exam)  
2006-07-20 - Teas/Email Correspondence Entered  
2006-07-14 - Communication received from applicant  
2006-07-19 - Applicant/Correspondence Changes (Non-Responsive) Entered  
2006-07-14 - TEAS Change Of Correspondence Received  
2006-07-14 - TEAS Response to Office Action Received  
2006-07-14 - Petition To Revive-Granted  
2006-07-14 - TEAS Petition To Revive Received

2006-07-10 - PAPER RECEIVED

2006-01-06 - Non-final action mailed

2006-01-05 - Non-Final Action Written

2005-12-06 - LIE Checked Susp - To Atty For Action

2005-06-01 - Report Completed Suspension Check Case Still Suspended

2004-11-26 - Report Completed Suspension Check Case Still Suspended

2004-05-04 - Letter of suspension mailed

2003-12-11 - Case File In TIGRS

2002-11-18 - Letter of suspension mailed

2002-10-15 - Communication received from applicant

2002-10-15 - PAPER RECEIVED

2002-08-28 - Non-final action mailed

2002-08-21 - Assigned To Examiner

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#### ATTORNEY/CORRESPONDENT INFORMATION

---

##### **Attorney of Record**

Virginia R. Richard

##### **Correspondent**

Lane Fisher

Fisher Zucker LLC

Suite 1200

121 South Broad Street

Philadelphia PA 19107

Phone Number: 215-545-5200

Fax Number: 215-545-8330

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OCTOBER 10, 2006

U.S. PATENT AND TRADEMARK OFFICE

TM 1077

**CLASS 42—(Continued).**

SN 79-618130, GIORGIO ARMANI S.P.A., ITALY, FILED 7-5-2005.



PRIORITY DATE OF 5-24-2005 IS CLAIMED.  
OWNER OF INTERNATIONAL REGISTRATION 0869300  
DATED 7-5-2005, EXPIRES 7-5-2015.  
FOR CONSULTANCY SERVICES RELATED TO THE  
INTERIOR AND EXTERIOR DECORATING OF HO-  
TELS, EXTERIOR AND INTERIOR DESIGN CON-  
SULTANCY SERVICES RELATED TO THE VISUAL  
APPEARANCE AND DISPLAY OF HOTELS, INTERIOR  
DESIGN CONSULTANCY SERVICES RELATED TO THE  
STYLING OF FURNITURE FOR HOTELS (U.S. CLS. 100  
AND 101).  
WILLIAM VERHOSEK, EXAMINING ATTORNEY

**CLASS 43—HOTEL AND RESTAURANT SER-  
VICES**

SN 76-881255, THURSDAY ENTERPRISE, LLC, PHILADEL-  
PHIA, PA. FILED 5-2-2002

**CUBA LIBRE**

OWNER OF U.S. REG. NO. 3831342.  
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO  
USE "CUBA", APART FROM THE MARK AS SHOWN.  
THE ENGLISH TRANSLATION OF THE WORD "LIBRE"  
IN THE MARK IS "FREE".  
FOR RESTAURANT AND CATERING SERVICES (U.S.  
CLS. 100 AND 101).  
FIRST USE 9-8-1999; IN COMMERCE 9-8-1999.  
MATTHEW PAPPAS, EXAMINING ATTORNEY

**CLASS 43—(Continued).**

SN 76-629,637, TIA BOMB PRODUCTS, INC., GLENDALE,  
AZ. FILED 1-27-2002

**HOOKEVILLE**

THE MARK CONSISTS OF STANDARD CHARACTERS  
WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE,  
SIZE, OR COLOR.  
FOR RESTAURANTS, COCKTAIL LOUNGES AND  
COFFEE SHOPS (U.S. CLS. 100 AND 101).  
MARLENE BELL, EXAMINING ATTORNEY

SN 76-643,385, MORNINGFIELDS FRANCHISING INC.,  
PARK RIDGE, IL. FILED 7-22-2005

**MORNINGFIELDS**

THE MARK CONSISTS OF STANDARD CHARACTERS  
WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE,  
SIZE, OR COLOR.  
FOR CARRY-OUT RESTAURANTS (U.S. CLS. 100  
AND 101).  
FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.  
FRED MANDIR, EXAMINING ATTORNEY

SN 76-649,167, MANDALAY RESORT, LLC, TAMPA, FL.  
FILED 10-25-2005

**PLAYA CRISTAL**

THE MARK CONSISTS OF STANDARD CHARACTERS  
WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE,  
SIZE, OR COLOR.  
FOR RESORT HOTEL SERVICES, RESORT HOSPI-  
TALITY SERVICES, NAMELY SPA SERVICES FEATUR-  
ING TEMPORARY ACCOMMODATIONS AND MEALS  
TO CLIENTS OF A HEALTH OR BEAUTY SPA; RES-  
TAURANT AND BAR SERVICES (U.S. CLS. 100 AND  
101).  
KATINA MISTER, EXAMINING ATTORNEY

EXHIBIT

C

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